

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Tim Mackey and John Nesse as Trustees of the Minnesota Laborers Health and Welfare Fund; Gary Reed and John Nesse as Trustees of the Minnesota Laborers Pension Fund; James Brady and Martha Henrickson as Trustees of the Minnesota Laborers Vacation Fund; Gary Reed and John Bartz as Trustees of the Construction Laborers Education, Training, and Apprenticeship Fund of Minnesota and North Dakota; Dan Olson and Chris Born as Trustees of the Minnesota Laborers Employers Cooperation and Education Trust; the Minnesota Laborers Health and Welfare Fund; the Minnesota Laborers Pension Fund; the Minnesota Laborers Vacation Fund; the Construction Laborers Education, Training, and Apprenticeship Fund of Minnesota and North Dakota; and the Minnesota Laborers Employers Cooperation and Education Trust,

Plaintiffs,

v.

North Metro Asphalt LLC d/b/a North Metro Asphalt & Contracting,

Defendant.

Civil No. 14-3032 (JRT/SER)

**REPORT &
RECOMMENDATION**

Carl S. Wosmek, Christy E. Lawrie, and Amy L. Court, Esqs., McGrann Shea Carnival Straughn & Lamb, Chartered, Minneapolis, Minnesota, for Plaintiffs.

STEVEN E. RAU, United States Magistrate Judge

This matter comes before the Court on Plaintiffs' Motion for an Order to Show Cause [Doc. No. 49]. In the motion, Plaintiffs seek civil contempt sanctions for Defendant's failure to provide responses to post-judgment discovery as previously ordered by this Court. *See* (Pls.')

Mem. of Law in Supp. of Their Mot. for an Order to Show Cause) [Doc. No. 50]; (Order Dated Nov. 30, 2015) [Doc. No. 46].

The Motion for an Order to Show Cause was filed on January 5, 2016, and was set for a hearing before the undersigned on March 9, 2016. (Am. Order to Show Cause) [Doc. No. 54]. On March 8, 2016, Plaintiffs filed a letter with the Court stating that Defendant had “recently provided the Plaintiffs with both written responses and some documents.” (Letter to Mag. J.) [Doc. No. 57]. Given the “timing of the production, together with the fact that some of the documents [were] produced in a form that [could not] be accessed by the Plaintiffs,” Plaintiffs had not yet had an opportunity to fully review Defendant’s production. (*Id.*). Plaintiffs therefore did not wish to withdraw their motion at the time of their March 8, 2016 letter, but asked that the Court reschedule the hearing on the Motion for an Order to Show Cause to allow them time to complete their review of Defendant’s belated responses to post-judgment discovery. (*Id.*). The Court rescheduled the hearing for April 27, 2016. (Text Only Entry Dated Mar. 9, 2016) [Doc. No. 58].

On April 20, 2016, the Court issued a text only order stating the following:

Given the time that has passed since Plaintiffs’ letter dated March 8, 2016 [Doc. No. 57], in which Plaintiffs stated that they were in the process of reviewing a recent production of documents by Defendant, Plaintiffs shall file a supplemental memorandum regarding their Motion for an Order to Show Cause [Doc. No. 49], which is scheduled to be heard on April 27, 2016. This supplemental memorandum must detail the continued basis for the Motion for an Order to Show Cause. Alternatively, if Plaintiffs are no longer pursuing their Motion for an Order to Show Cause, they may file a letter withdrawing the motion. Plaintiffs’ supplemental memorandum or letter shall be filed no later than April 25, 2016, and Plaintiffs shall promptly serve Defendant with their filing.

(Text Only Entry Dated Apr. 20, 2016) [Doc. No. 59]. The April 25, 2016 deadline passed, and Plaintiffs did not file a supplemental memorandum or letter as the Court directed in its April 20, 2016 order. In light of Plaintiffs’ failure to comply with the Court’s order and provide the Court

with the information necessary to address their pending motion, the Court hereby recommends that the Motion for an Order to Show Cause be denied without prejudice.¹

Based on all the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED** that Plaintiffs' Motion for an Order to Show Cause [Doc. No. 49] be **DENIED without prejudice**.

Dated: April 26, 2016

s/Steven E. Rau
STEVEN E. RAU
United States Magistrate Judge

Notice

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore, not appealable directly to the Eighth Circuit Court of Appeals.

Under D. Minn. LR 72.2(b)(1) "a party may file and serve specific written objections to a magistrate judge's proposed findings and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in LR 72.2(c).

Under Advisement Date: This Report and Recommendation will be considered under advisement 14 days from the date of its filing. If timely objections are filed, this Report and Recommendation will be considered under advisement from the earlier of: (1) 14 days after objections are filed; or (2) from the date a timely response is filed.

¹ The hearing on the Motion for an Order to Show Cause scheduled for April 27, 2016, at 9:00 a.m. will be cancelled by a separate order.